

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Curtis Jerome Mitchell,)	
)	C/A No. 0:12-0346-MBS
Plaintiff,)	
)	
vs.)	
)	ORDER
Senior Detective Marc Kitts, in both)	
his personal and professional capacities,)	
)	
Defendant.)	
_____)	

Plaintiff Curtis Jerome Mitchell is an inmate in custody of the South Carolina Department of Corrections. Plaintiff, proceeding pro se, filed a complaint on February 6, 2012, alleging that Defendant Marc Kitts falsely testified before the York County Grand Jury, which resulted in two indictments against Plaintiff. Plaintiff brings this action pursuant to 42 U.S.C. § 1983, alleging that his constitutional rights have been violated. Plaintiff makes a demand for punitive damages.

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Paige J. Gossett for pretrial handling. The Magistrate Judge reviewed the complaint pursuant to the provisions of 28 U.S.C. §§ 1915, 1915A, and the Prison Litigation Reform Act. On February 27, 2012, the Magistrate Judge filed a Report and Recommendation in which she determined that Plaintiff's claim for monetary damages is barred because Plaintiff failed to demonstrate that his conviction had been overturned, as required by Heck Humphrey, 512 U.S. 477, 487 (1994). Accordingly, the Magistrate Judge recommended that Plaintiff's complaint be dismissed. Plaintiff filed no objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court.

Mathews v. Weber, 423 U.S. 261, 270 (1976). The court may accept, reject, or modify, in whole or in part, the Report and Recommendation or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has thoroughly reviewed the record. The court concurs with the Magistrate Judge’s recommendation and incorporates the Report and Recommendation herein. Plaintiff’s complaint is summarily dismissed without prejudice.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

March 21, 2012

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.